

Honorable Suzanne H. Segal (Ret.)
Signature Resolution
633 W. 5th Street, Suite 1000
Los Angeles, CA 90071
JudgeSegal@SignatureResolution.com
Special Master

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COSTAR GROUP, INC. AND
COSTAR REALTY INFORMATION,
INC.,

Plaintiffs,

vs.

COMMERCIAL REAL ESTATE
EXCHANGE, INC.,

Defendant.

And Related Cases.

Case No. CV 23-0106 CBM (ASx)

Case No. CV 23-0104 CBM (ASx)

Case No. CV 20-8819 CBM (ASx)

SPECIAL MASTER’S ORDER
GRANTING IN PART AND
DENYING IN PART JACKSON
SQUARE VENTURES, LLC’S
MOTION TO QUASH SUBPOENA
AND FOUNDER COLLECTIVE GP
II, LLC’S MOTION TO QUASH
SUBPOENA

(Dkt. Nos. 1 and 5 and related filings)

On July 21, 2023, nonparty Jackson Square Ventures, LLC (“JSV”) filed a motion to quash subpoena in the United States District Court for the Northern

1 District of California. On July 21, 2023, nonparty Founder Collective GP II, LLC
2 (“Founder Collective”) filed a Motion to Quash Subpoena in the United States
3 District Court for the District of Massachusetts. Both motions to quash were
4 transferred to the United States District Court for the Central District of California
5 to be heard by the Special Master. *See Jackson Square Ventures, LLC v. CoStar*
6 *Grp., Inc.*, No. 2:23-mc-00106-CBM(ASx) (C.D. Cal. July 21, 2023), Dkt. 1;
7 *Founder Collective GP II, LLC v. CoStar Grp., Inc.*, No. 2:23-mc-00104-CBM
8 (ASx) (C.D. Cal. July 21, 2023), Dkt. 5 (collectively, “the Motions”)¹. Plaintiffs
9 CoStar Group, Inc. and CoStar Realty Information, Inc. (“CoStar”) filed a
10 Combined Opposition to the Motions on August 11, 2023. (Dkt. 16.) JSV and
11 Foundation Collective filed an Omnibus Reply on August 25, 2023. (Dkt. 18.)
12

13
14 The Special Master has considered the Motions, the Combined Opposition,
15 the Omnibus Reply, and all related filings. The Special Master determined that no
16 hearing was necessary to resolve the Motions. For the reasons discussed below,
17 the Motions are GRANTED in part and DENIED in part.
18

19 **A. JSV’s AND FOUNDER COLLECTIVE’S CONTENTIONS**

20

21 CoStar Group has served nonparties JSV and Founder
22 Collective with overbroad subpoenas seeking irrelevant information—
23 for a second time. JSV and Founder Collective are merely investors in
24 CREXi and have no connection to the allegations in the Underlying
25 Litigation.
26

27
28
29 ¹ The Motions make the same arguments.

1 CoStar originally served JSV, Founder Collective, and other
2 CREXi investors each with a 643-page subpoena in December 2022.
3 CoStar demanded more than 35 broad categories of documents over a
4 span of eight years that were either entirely irrelevant, or cumulative
5 of discovery already sought from CREXi. CoStar's subpoenas also
6 attached hundreds of self-serving documents that CoStar obtained
7 from foreign legal proceedings in an apparent effort to discredit
8 CREXi with its investors. When threatened with sanctions over these
9 improper and harassing subpoenas, CoStar withdrew them.

11 CoStar's second subpoena to JSV and Founder Collective is
12 déjà vu. Although CoStar has now stripped the documents from
13 foreign proceedings and decreased the number of document requests,
14 the subpoena remains overbroad and cumulative of party discovery in
15 the Underlying Litigation. CoStar requests eleven broad categories of
16 documents over a span of more than eight years with a scope almost
17 equivalent to the original subpoena. Each request seeks "[a]ll
18 Documents and Communications" regarding broad topics such as
19 "CoStar" and "CREXi" and targets sensitive internal JSV and
20 Founder Collective documents regarding the investors' internal
21 analyses and investment decision-making process. As before,
22 CoStar's requests encompass documents that are irrelevant to the
23 claims and defenses in the Underlying Litigation, or are—as CoStar
24 has conceded in meet-and-confer discussions—cumulative of
25 discovery CoStar has already sought from CREXi. These requests
26 harass and impose an undue discovery burden on JSV and Founder
27 Collective.
28
29

B. COSTAR'S CONTENTIONS

CREXi's launch and continuing operations have been funded by over twenty investors, including Founder Collective (one of CREXi's earliest investors) and JSV (a two-time investor who holds a CREXi board seat). While Movants argue that they have "no connection" to the underlying litigation between CoStar and CREXi, that is demonstrably untrue. CREXi's communications with JSV and Founder Collective, and JSV's and Founder Collective's own internal communications about their CREXi investment (including valuations) are relevant to CoStar's damages assessment; copyright misappropriation, DMCA, and other claims; and CREXi's affirmative defenses.

Courts in intellectual property disputes have routinely ordered parties and third-party investors to produce exactly the same types of documents CoStar seeks here, and JSV and Founder Collective have no legitimate argument that such documents are not highly relevant. While they argue that CoStar should first seek these documents from CREXi, CREXi has refused to produce them (and CREXi does not possess JSV's and Founder Collective's purely internal documents).

Moreover, CoStar has attempted to collect this evidence in a targeted way. CoStar has issued narrowly tailored subpoenas to just two of CREXi's over twenty investors which, collectively, invested in CREXi across all three of its financing rounds. CoStar has also engaged in additional efforts to avoid any undue burden on JSV and

1 Founder Collective, offering to discuss search terms, date ranges, and
2 other ways to mitigate any perceived burden. Founder Collective has
3 disclosed that almost all of the responsive material can be located in a
4 single folder, and JSV has failed to articulate any specific undue
5 burden.

6 7 **C. JSV's AND FOUNDER COLLECTIVE'S REPLY CONTENTIONS**

8
9 CoStar's subpoenas should be quashed for four reasons. First,
10 the documents CoStar requests are almost entirely cumulative of party
11 discovery. Second, CoStar does not even try to justify the relevance of
12 its original broad subpoenas, and its theories of relevance as to
13 specific documents lack merit. Third, CoStar fails to justify the undue
14 burden of the irrelevant and broad discovery CoStar seeks into "all
15 documents and communications" on numerous topics. And finally,
16 CoStar's improper purpose of harassment and its failure to narrowly
17 tailor its requests justifies quashing the subpoenas and awarding JSV
18 and Founder Collective their reasonable attorneys' fees in responding
19 to the subpoenas.
20
21

22 **D. DISCUSSION**

23
24 On timely motion, the court "must quash or modify a subpoena that . . .
25 subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iv). In
26 determining whether a subpoena poses an undue burden, courts "'weigh the burden
27 to the subpoenaed party against the value of the information to the serving party.'" *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005) (citation omitted).
28
29

1 “While discovery is a valuable right and should not be unnecessarily restricted, the
2 ‘necessary’ restriction may be broader when a nonparty is the target of discovery.”
3 *Dart Industries Co., Inc. v. Westwood Chemical Co.*, 649 F.2d 646 (9th Cir. 1980).

4
5 CoStar’s subpoenas impose undue burden on nonparties JSV and
6 Foundation Collective. CoStar’s requests seeking “all” documents and
7 communications on various broad topics over an eight-year time period are not
8 narrowly tailored to seek relevant documents proportional to the needs of the case.
9 *See Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813 (9th Cir. 2003)
10 (affirming district court’s quashing of subpoena where “[n]o attempt had been
11 made to try to tailor the information request to the immediate needs of the case.”)

12
13
14 The overbroad requests seek information that is not relevant, including
15 JSV’s and Foundation Collective’s internal confidential commercial information.
16 *See Fed. R. Civ. P. 45(d)(3)(B)(i)* (permitting courts to quash subpoena that
17 requires disclosing “confidential...commercial information[.]”). CoStar asserts the
18 information it seeks bears directly on CoStar’s damages under the Copyright Act,
19 the willfulness of CREXi’s conduct, and CREXi’s DMCA defense. (*See* Dkt. 16 at
20 10- 15.) However, JSV’s and Founder Collective’s internal documents relating to
21 their own knowledge, valuations, assessments, decision-making, are not probative
22 of CREXi’s liability nor CoStar’s damages.

23
24
25 Unlike the nonparty investors from whom records were subpoenaed in
26 *Struck v. Gao*, 2023 WL 4155373, at *3 (C.D. Cal. Mar. 15, 2023) – a case in
27 which the defendant had allegedly used contact lists and other trade secrets
28 misappropriated from the plaintiff to identify, contact, and/or secure investment
29 from the nonparty investors for his competing venture capital business, JSV and

1 Foundation Collective are not alleged to be witnesses to nor involved in CREXi's
2 alleged copyright infringement. Moreover, even in *Struck v. Gao*, the court found
3 a request for *all* documents and communications from the nonparty investors
4 relating to the defendant "overbroad[.]" *Id.* at *11.

5
6 CoStar's reliance on *Maplebear Inc. v. Uber Techs., Inc.*, 2021 WL 1845535
7 (N.D. Cal. Mar. 23, 2021) is also misplaced. In that case, Instacart alleged that its
8 competitor Cornershop had "scraped" Instacart's data and used it for Cornershop's
9 benefit. Instacart subpoenaed nonparty Uber, which had acquired a majority
10 interest in Cornershop. The court declined to order Uber to produce documents
11 "duplicative of information sought from Cornershop[.]" and ordered Uber to
12 produce only "(1) any information about Uber's knowledge, before the acquisition
13 of the majority interest in Cornershop, of Cornershop's practice of scraping
14 intellectual property from Instacart's website and valuation of that practice and the
15 resulting data, and (2) Uber's valuation of Cornershop's large stock of images and
16 pricing data that were taken from Instacart." *Id.* *2. Here, the nexus between
17 JSV's and Foundation Collective's investments in CREXi – some of which
18 occurred years before CREXi's alleged infringement – and the value of CoStar's
19 allegedly infringed intellectual property and/or CREXi's unjust enrichment is
20 insufficient to justify the broad scope of documents and communications relating
21 to such investments that CoStar requests.²
22
23
24
25
26
27

28 ² The Special Master incorporates by reference the analysis regarding relevance
29 and Rule 26 contained in the Order Granting in Part and Denying in Part CoStar's
Motion to Compel Business Model and Valuation documents.

1 *Complete Entertainment Resource LLC v. Live Nation Entertainment, Inc.*,
2 2017 WL 11682915 (C.D. Cal. Mar. 2, 2017) is also inapposite. There, the
3 defendant subpoenaed the “internal analyses” of nonparty investors regarding the
4 plaintiff’s pre-infringement value for “potential impeachment” of the plaintiff’s
5 claimed valuation, and the court agreed the documents were relevant for such
6 purpose. *Id.* at *2. CoStar does not claim JSV’s and Foundation Collective’s
7 internal valuations of CREXi are relevant to impeach any valuation claimed by
8 CREXi.
9

10
11 Furthermore, to the extent CoStar’s requests encompass relevant documents
12 and communications relating to CREXi, such documents can be obtained from
13 CREXi rather than the nonparties. “Courts are particularly reluctant to require a
14 non-party to provide discovery that can be produced by a party.” *Amini Innovation*
15 *Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 410 (C.D. Cal. 2014)
16 (citing cases); *see also Moon*, 232 F.R.D. at 638 (finding subpoena imposed
17 “undue burden” on nonparty where plaintiffs could obtain the documents from the
18 defendant). The Special Master has ordered CREXi to produce valuation
19 documents. Similar discovery from third-parties is duplicative and unnecessary.
20

21 CoStar argues it has been unsuccessful in its efforts to obtain all materials
22 sought from CREXi, so nonparty discovery is appropriate. (*See* Dkt. 16 at 17.) To
23 the contrary, the Special Master denied the majority of CoStar’s motion to compel
24 CREXi to produce additional documents relating to its business model and investor
25 communications on the grounds that CREXi had already agreed to produce those
26 responsive documents relevant to liability and damages and to CREXi’s DCMA
27 defense, and additional documents encompassed by CoStar’s requests were not
28 relevant. Nonparties JSV and Foundation Collective should not be burdened with
29

1 producing documents relating to CREXi that CREXi was not required to produce
2 because such documents are not relevant and proportional to the needs of the case.

3
4 The Motions are GRANTED in PART. The subpoenas are QUASHED.
5 JSV and Foundation Collective are not required to produce documents in response
6 to the subpoenas.

7
8 Under Rule 45(c)(1), courts have discretion to impose sanctions on a party
9 or attorney who fails to “take reasonable steps to avoid imposing undue burden or
10 expense on a person subject to the subpoena.” *Mount Hope Church v. Bash Back!*,
11 705 F.3d 418, 425 (9th Cir. 2012). The Special Master exercises her discretion and
12 declines to order such sanctions here. JSV’s and Foundation Collective’s requests
13 for attorneys’ fees are DENIED.
14

15
16 IT IS SO ORDERED.

17
18 DATED: October 9, 2023

DocuSigned by:

Hon. Suzanne Segal (Ret.)

2B739185DE71459...

Honorable Suzanne H. Segal (Ret.)
Special Master